CLARKSON LAW FIRM, P.C.
Ryan J. Clarkson (State Bar No. 257074)
rclarkson@clarksonlawfirm.com
Glenn A. Danas (SBN 270317)
gdanas@clarksonlawfirm.com
Maxim Gorbunov (SBN 343128)
mgorbunov@clarksonlawfirm.com
22525 Pacific Coast Highway
Malibu, CA 90265
Telephone: (213) 788-4050
Facsimile: (213) 788-4070

Attorneys for Plaintiffs and the Putative Class

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

02/06/2026
Clerk of the Court
BY: SANDRA SCHIRO
Deputy Clerk

[Additional counsel listed on following page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

STEVE MCKINNEY, MICHELLE LYNN BRUNETTI, ROGER JUSTIN CAFFIER, CHLOE AGAPE, AMBER ROGOWICZ, AND ALEXANDER OVADAL, individually, on behalf of all other similarly situated, and on behalf of California and other aggrieved persons,

Plaintiffs,

v.

SCALE AI, INC., a corporation; SMART ECOSYSTEM, INC., a corporation; HIREART, INC., a corporation; ALEXANDR WANG, DENNIS CINELLI, DANIEL BERRIOS, XIAOTE ZHU; and DOES 1–50, inclusive,

Defendants.

Case No.: CGC-24-620481

CLASS ACTION

Assigned for all purposes to:
Hon. Ethan P. Schulman, Dept. 304

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES

[Filed concurrently with Declarations of Glenn Danas, Bryan Schwartz, James Goodley, Laura Ho, Steve McKinney, Michelle Lynn Brunetti, Roger Justin Caffier, Amber Rogowicz, Alexander Ovadal and Chloe Agape in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement and [Proposed] Order Granting Motion]

PRELIMINARY APPROVAL HEARING
Date: March 4, 2026
Time: 1:30 p.m.
Dept: 304

Complaint filed:	December 10, 2024
FAC filed:	February 28, 2025
SAC filed:	May 19, 2025
TAC filed:	January 28, 2026

CLARKSON LAW FIRM, P.C.
Zarrina Ozari (State Bar No. 334443)
zozari@clarksonlawfirm.com
95 3rd St, 2nd Floor
San Francisco, California 94103
Telephone: (415) 651-7990
Facsimile: (213) 788-4070

DARDARIAN HO KAN & LEE
David Borgen (SBN 099354), Of Counsel
dborgen@dhkl.law
Laura L. Ho (SBN 173179)
lho@dhkl.law
Ginger Grimes (SBN 307168)
ggrimes@dhkl.law
155 Grand Avenue, Suite 900
Oakland, CA 94612
Tel: (510) 763-9800
Fax: (510) 835-1417

GOODLEY McCARTHY LLC
James E. Goodley (Admitted *Pro Hac Vice*)
james@gmlaborlaw.com
Ryan P. McCarthy (Admitted *Pro Hac Vice*)
ryan@gmlaborlaw.com
One Liberty Place
1650 Market Street, Suite 3600
Philadelphia, PA 19103
Tel: (215) 394-0541

BRYAN SCHWARTZ LAW, P.C.
Bryan Schwartz (SBN 209903)
bryan@bryanschwartzlaw.com
Sam Goity (SBN 359678)
sam@bryanschwartzlaw.com
180 Grand Avenue, Suite 1380
Oakland, California 94612
Tel. (510) 444-9300
Fax (510) 444-9301
Email: bryan@bryanschwartzlaw.com

Attorneys for Plaintiffs and the Putative Class

TO THE COURT AND TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on March 4, 2026, at 1:30 p.m. in Dept. 304 of the San Francisco County Superior Court, located at 400 McAllister Street, San Francisco, CA 94102, pursuant to Code of Civil Procedure § 382 and California Rules of Court 3.769, *et seq*., Plaintiffs Steve McKinney, Michelle Lynn Brunetti, Roger Justin Caffier, Chloe Agape, Amber Rogowicz, and Alexander Ovadal ("Plaintiffs") will move the Court for an Order granting preliminary approval of the proposed class action settlement between Plaintiffs and Defendants Scale AI, Inc., Smart Ecosystem, Inc., Alexandr Wang, Dennis Cinelli, Daniel Berrios, and Xiaote Zhu, and HireArt, Inc. ("Defendants").[1] Plaintiffs further move the Court for an Order:

1. Granting preliminary approval of the Class Settlement set forth in the Class Action and PAGA Settlement Agreement that is attached as Exhibit 1 to the Declaration of Glenn A. Danas filed with this Motion;
2. Certifying a Class for settlement purposes only;
3. Approving the Class Notice and the plan for the distribution of the Class Notice;
4. Appointing Plaintiffs Steve McKinney, Michelle Lynn Brunetti, Roger Justin Caffier, Chloe Agape, Amber Rogowicz, and Alexander Ovadal as Class Representatives for settlement purposes only;
5. Appointing Plaintiffs' Counsel, Clarkson Law Firm, P.C., Dardarian Ho Kan & Lee, Bryan Schwartz P.C., and Goodley McCarthy LLC as Class Counsel for settlement purposes only;
6. Appointing Simpluris, Inc as the Administrator; and
7. Scheduling a Final Approval Hearing.

The Motion will be based upon this Notice; the attached Memorandum of Points and Authorities; the Declarations of Glenn A. Danas, Laura L. Ho, James Goodley, and Bryan J. Schwartz, Steve McKinney, Michelle Lynn Brunetti, and Roger Justin Caffier, Chloe Agape,

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[1] Unless otherwise specified, all capitalized terms in this Notice of Motion and Motion have the same definitions set forth in the Class Action and PAGA Settlement Agreement (the "Settlement" or "Settlement Agreement").

Amber Rogowicz, and Alexander Ovadal, filed concurrently herewith; the records and files in this action; and any other further evidence or argument that the Court may properly receive at or before the hearing.

Dated: February 6, 2026

Respectfully submitted,

CLARKSON LAW FIRM, P.C.
BRYAN SCHWARTZ LAW, P.C.
DARDARIAN HO KAN & LEE
GOODLEY MCCARTHY LLC

/s/ Glenn A. Danas

Glenn A. Danas
Maxim Gorbunov
Zarrina Ozari
Bryan Schwartz
Sam Goity
Laura L. Ho
Ginger Grimes
James Goodley
Ryan McCarthy

Attorneys for Plaintiffs Steve McKinney, Michelle Lynn Brunetti, Roger Justin Caffier, Chloe Agape, Amber Rogowicz, and Alexander Ovadal, and all others similarly situated

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

RULES

TREATISES

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Steve McKinney, Michelle Lynn Brunetti Roger Justin Caffier, Chloe Agape, Amber Rogowicz, and Alexander Ovadal ("Plaintiffs") seek preliminary approval of a proposed $12,500,000.00 non-reversionary, wage and hour class action common fund settlement with Defendants Scale AI, Inc., Smart Ecosystem, Inc., Alexandr Wang, Dennis Cinelli, Daniel Berrios, and Xiaote Zhu, and HireArt, Inc. ("Defendants," and together with Plaintiffs, the "Parties") as set forth in the Class Action and PAGA Settlement Agreement ("Settlement" or "Settlement Agreement") that is attached as Exhibit 1 to the Declaration of Glenn A. Danas in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ["Danas Decl."] filed with this Motion.[2] The Settlement will provide monetary payments to approximately 15,333 class members, the vast majority of whom would likely recover nothing absent this settlement. As set forth more fully below, the proposed Settlement satisfies all the criteria for settlement approval under California law. The Settlement, supported by several leading California Plaintiffs' employment, class action firms, was reached after extensive investigation, informal discovery, and months of negotiations encompassing two, full-day mediations with retired judges. The negotiations were at arms-length and the successful second mediation was facilitated by an experienced class action mediator, Hon. Peter D. Lichtman (Ret.). Accordingly, Plaintiffs request that the Court preliminarily approve the proposed Settlement, certify the proposed settlement class for settlement purposes only, approve the proposed notice, and set a Final Approval Hearing.

II. SUMMARY OF THE LITIGATION AND SETTLEMENT

A. Plaintiffs' Claims

This is a wage and hour class and Private Attorneys General Act ("PAGA") (Cal. Lab. Code §§ 2699, *et seq.*) representative action. Plaintiffs and putative class members worked in California as independent contractors and/or exempt and/or non-exempt employees for

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[2] Unless otherwise specified, all capitalized terms in this Memorandum of Points and Authorities have the same definitions set forth in the Class Action and PAGA Settlement Agreement.

Defendants during the class period, as "Contributors" or in similar positions. Defendant Scale AI, Inc. ("Scale AI") develops artificial intelligence systems.[3] Scale AI uses thousands of Contributors, most of whom are classified as independent contractors, to train AI using its Outlier and Remotasks platforms[4]. Scale AI's platforms promote this work by stating that individuals can "work flexibly from anywhere, anytime – no minimum hours.[5]" Defendant HireArt, Inc. is a staffing company that placed employees to work for Scale AI. (Danas Decl., ¶ 2.)

Plaintiffs allege that Defendants willfully misclassified certain Class Members as independent contractors or exempt employees, failed to pay minimum and overtime wages, failed to provide compliant meal and rest periods or pay premiums, required Plaintiffs and Class Members to perform work off-the-clock without compensation, failed to reimburse necessary business expenses, failed to track and make available paid sick days, failed to comply with paid sick leave, failed to properly provide seventh day of rest pay, failed to provide workers compensation insurance, failed to comply with the Wage Theft Prevention Act, failed to comply with Labor Code § 432.5, violated the California Worker Adjustment and Retraining Notification ("WARN") Act and the federal WARN Act, unlawfully assigned wages, failed to pay using a negotiable instrument, and failed to provide a safe and healthful place of employment. Based on these allegations, Plaintiffs assert related claims for failure to provide accurate wage statements, failure to timely pay wages, failure to pay all earned and unpaid wages upon separation, failure to timely pay all final wages at termination, failure to keep requisite payroll records and properly maintain required records, unfair business practices, and civil penalties under the California Private Attorneys General Act ("PAGA"). (*Id.* at ¶ 3.)

On December 10, 2024, Plaintiff Steve McKinney commenced *McKinney, et al. v. Scale AI, Inc., et al.*, San Francisco Case No. CGC-24-620481, ("*McKinney* Action" or "Action") by

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[3] *About Us*, Scale AI, https://scale.com/about (Last accessed December 17, 2025.)

[4] *About Us*, Outlier AI, https://outlier.ai/about-us (Last accessed December 17, 2025.)

[5] *Home Page*, Outlier AI, https://outlier.ai (Last accessed December 23, 2025.)

filing a Complaint alleging wage violations against Scale AI, Alexander Wang, Dennis Cinelli, Michael Kratsios, Daniel Berrios, and Xiaote Zhu. (*Id.* at ¶ 4.) On February 28, 2025, Plaintiff McKinney filed an amended complaint to add a claim for civil penalties, willful misclassification under PAGA, failure to furnish safe and healthful employment or place of employment, and a PAGA claim, which Plaintiff McKinney had exhausted with California's Labor Workforce Development Agency (LWDA) on December10, 2024. (*Id.*) On May 19, 2025, Plaintiff McKinney filed a second amended complaint naming additional plaintiffs, Plaintiff Brunetti and Plaintiff Caffier. (*Id.*)

On January 3, 2025, Plaintiff Rogowicz commenced *Rogowicz, et al. v. Smart Ecosystem, Inc.*, San Francisco Case No. CGC-25-621144, ("*Rogowicz* Action") by filing a Complaint alleging PAGA claims for similar violations as in the *McKinney* Action. (*Id.* at ¶ 5; Declaration of Bryan Schwartz in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ["Schwartz Decl."], ¶ 4.) Plaintiff Rogowicz had previously exhausted her PAGA claims with the LWDA on October 29, 2024. (*Id.*) The *Rogowicz* Action was amended on August 4, 2025 to add class claims for the same violations as the initial PAGA complaint, and to add Plaintiff Ovadal, who also exhausted with the LWDA on the same date. (*Id.*)

On April 11, 2025, Plaintiff Agape commenced a PAGA action, *Agape v. Scale AI, Inc., et al.*, San Francisco County Case No. CGC-25-624303, ("*Agape* PAGA Action"), and on May 9, 2025, filed a class action, *Agape v. Scale AI, Inc., et al.*, San Francisco County Case No. CGC-25-625224. ("*Agape* Class Action") The *Agape* Class Action and *Agape* PAGA Action assert claims for wage and hour violations on behalf of workers HireArt placed to work at Scale AI, as well as similar claims on behalf of independent contractors of Scale AI as had been alleged in the *McKinney* Action and the *Rogowicz* Action. (*Id.* at ¶ 6.) Plaintiff Agape sent the LWDA a notice of Scale AI and HireArt's Labor Code violations on December 24, 2024. (Danas Decl., ¶ 6; Declaration of Laura L. Ho in Support of Plaintiffs' Motion for Preliminary Approval ["Ho Decl."], ¶¶ 3-4)

On May 6, 2025, Plaintiff Rogowicz and her counsel participated in a full-day mediation with Hon. Robert McGuiness (Ret.), which did not resolve this matter. (Schwartz Decl., ¶ 5.)

On November 21, 2025, Plaintiffs Steve McKinney, Michelle Lynn Brunetti, and Roger Justin Caffier, Chloe Agape, Amber Rogowicz, and Alexander Ovadal filed an amended LWDA exhaustion letter, and on January 28, 2026, filed a filed a Third Amended Complaint, consolidating the actions (the "Operative Complaint"). (Danas Decl., ¶ 6.)

Defendants deny all of the allegations alleged in these actions, including in the Operative Complaint, deny any failure to comply with the laws identified in in the Operative Complaint, and deny any and all liability. (Settlement, ¶ 2.6.)

B. <u>Discovery and Investigation</u>

Plaintiffs' counsel undertook an extensive investigation both before and after filing this lawsuit, including researching Defendants' Outlier and Remotasks software which Class Members used as the primary platform to perform their work, what tasks Class Members were engaged in, analyzing the significant obstacles for claims under the WARN Act claims, and undertaking a legal analysis of whether AB 5 applies to the Class Members. (Danas Decl., ¶ 7; Schwartz Decl., ¶¶ 5-6, 8; Declaration of James E. Goodley in Support of Plaintiffs' Motion for Preliminary Approval ["Goodley Decl."], ¶ 9-10.) After filing the Complaint, Class Counsel engaged in an extensive outreach campaign during which they spoke with over 300 individuals who worked for Defendants regarding their experiences and the claims at issue. After scheduling the mediations, the Parties exchanged documents and information before mediating the actions. (Danas Decl., ¶ 7.) Defendants produced various documents including a sampling of time and pay data, data showing active dates of accounts in the sample, and statistical data regarding the putative class and aggrieved employees. (*Id.*) Before filing, and in preparation for the mediations, Plaintiffs' counsel consulted at length with Plaintiffs and putative class members regarding their experiences, including a thorough review of materials they provided. (*Id.*) Plaintiffs also obtained declarations from putative class members related to the claims in this action in preparation for mediation. (*Id.*) Plaintiffs retained and consulted an expert in evaluating the damage calculation. (Schwartz Decl., ¶ 5.)

After reviewing and analyzing documents produced by Defendants and speaking with other individuals who worked for Defendants, Class Counsel was able to evaluate the likelihood of success at various anticipated points in the litigation, including defeating motions to compel arbitration and on class certification, success on the merits at summary judgment and trial, and Defendants' maximum monetary exposure for all claims. (*Id*.) Class Counsel also investigated the applicable law regarding the defenses Defendants indicated they would assert in these Actions, including the exceptions to AB5 under Labor Code 2775, *et seq.* (*Id*.) Through this robust investigation, Class Counsel was able to compile a damage analysis. (*Id*.)

C. Settlement Negotiations

The *Rogowicz* Action was mediated in person with Judge McGuiness in San Francisco on May 6, 2025, unsuccessfully. (Schwartz Decl., ¶ 5.) After all putative class counsel began working together, on September 15, 2025, the Parties participated in another private mediation with Judge Lichtman (Danas Decl., ¶ 9.) The mediation was conducted with counsel attending in-person at the Signature Resolution office in downtown Los Angeles and several Plaintiffs attending via Zoom. The settlement negotiations were at arm's length and, although conducted in a professional manner, were adversarial. The Parties went into the mediation willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate their position through trial and appeal if a settlement had not been reached. (*Id*.)

After extensive negotiations and discussions regarding the strengths and weaknesses of Plaintiffs' claims and Defendants' defenses, the Parties were able to reach a resolution, with the Parties accepting a very detailed mediator's proposal on September 24, 2025. (*Id*.) The Settlement Agreement took months of additional negotiations before it was finally fully executed on February 6, 2026. (*Id.* at ¶ 8; **Ex. 1** [Class Action and PAGA Settlement Agreement].)

D. Overview of the Major Risks of Continued Litigation

Class Counsel has conducted a significant investigation into the facts and risks of this case and the likelihood of obtaining a higher recovery for the class through continued litigation. Based on the foregoing discovery and their own independent investigation and evaluation, Class Counsel believes that the Settlement is fair, reasonable, and adequate and is in the best interests of the Class in light of all known facts and circumstances, the risk of significant delay, the defenses that could be asserted by Defendants both to certification and on the merits, trial risk, and appellate risk. (Danas Decl., ¶ 17; Schwartz Decl., ¶ 8; Goodley Decl., ¶¶ 2, 11; and Ho Decl., ¶¶ 2, 9.)

Indeed, the **$12,500,000** Settlement represents a sizeable recovery on a high-risk case in which the vast majority of class members would likely have received nothing. (*Id.* at ¶ 37.) Considering the risk and uncertainty of prevailing on a motion to compel arbitration, at class certification, and at trial, this is an excellent result for the Class. Indeed, because of the proposed Settlement, class members will receive timely, guaranteed relief and will avoid the risk of an unfavorable judgment. Although Defendants deny all of Plaintiffs' claims and contend Plaintiffs would not succeed in bringing those claims to court (as opposed to arbitration), let alone in certifying those claims for class treatment or on the merits of their claims, Defendants nonetheless agreed to resolve the claims asserted in the Actions through settlement to avoid the expense, distraction, and uncertainty of protracted litigation.

Although Class Counsel estimated that Defendants' maximum potential liability for all claims could be ten times larger than the settlement, or more, a number of factors make it extraordinarily unlikely that such an amount would ever be awarded or recovered.[6] (Danas Decl. at ¶¶ 17–37; Goodley Decl., ¶¶ 9-10; Schwartz Decl., ¶ 8.) For class members to have had any chance of recovering damages at trial, Plaintiffs would have needed to defeat Defendants' motions to compel arbitration on an individual basis as to each Plaintiff, or defeating the entire arbitration agreement and avoiding severance of unconscionable terms in a way that applied classwide. (Danas Decl. ¶ 20.) While waivers of the right to pursue representative PAGA claims are not enforceable, Plaintiffs may have had to arbitrate their individual PAGA claims violations first before returning to court to address the representative, non-individual portion. (*Id.*) Although Plaintiffs believe they would likely have prevailed on the merits in arbitration, the issues presented are novel, and an

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[6] *See, e.g., In re Uber FCRA Litig.* (N.D.Cal. June 29, 2017, No. 14-cv-05200-EMC) 2017 U.S. Dist. LEXIS 101552, at *18 (Approving $7.5 million settlement despite potential liability ranging from $100 million to $1 billion where Plaintiffs faced significant risks including an arbitration agreement.)

arbitrator may not have agreed with Plaintiffs. For example, Defendants will likely allege that Plaintiffs and the Class Members are exempt from AB5 as licensed professionals under Labor Code section 2783, as data aggregators under Labor Code section 2782, and as individuals providing Professional services under Labor Code section 2778. (*Id.* ¶ 25.) Because AI training by independent contractors has only risen to popularity in recent years based on Plaintiffs' investigation, the law is not settled as to whether these exemptions apply to Plaintiffs and the Class Members. (*Id.*) If Defendants were to prevail on this argument, the misclassification inquiry would be guided by the more rigorous multifactor test laid out in *S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341, under which, Defendants argue, Plaintiffs would not prevail. (*Id.*)

Moreover, assuming arbitrator(s) ruled on the merits, there are unanswered questions regarding whether claim and issue preclusion applies when an arbitrator resolves an "individual" PAGA claim, potentially necessitating a second round of merits briefing in this Court. (*Id.* ¶ 20.)

Further, Plaintiffs would have to persuade the court that the entire arbitration agreement should be thrown out (including the class action waiver), rather than just severing unconscionable provisions. (*Id.* ¶ 21.) It is possible that Defendants would have prevailed in enforcing their arbitration clause as to the class claims, in which case, all class members would have been required to file their own individual arbitrations, incurring significant out-of-pocket expenses, investment of time, and challenges obtaining legal representation in pursuing smaller value individual claims on a risky and novel case theory. (*Id.*) Inevitably, based upon class counsel's experience, and despite the strength of their claims, the vast majority of class members would never file them. (*Id.*) Moreover, even if Plaintiffs prevailed in opposing Defendants' motion to compel arbitration, Defendants would have pursued an appeal as of right from the ruling on their motion to compel arbitration and would likely have been able to stay the case in court for years pending appeal. (*Id.*)

Thus, the mere fact that this case has settled on a classwide basis at an early stage, before risky motion practice and immediate arbitration-related appeals, is a victory for the class, who faced the prospects of no recovery concerning their non-PAGA damages had Defendants prevailed on an early motion to compel arbitration, and long-delayed recovery in any event. (*Id.* ¶ 22.) Even if these arbitration obstacles were the only risks, the recovery here would be fair. But there were other risks here as well. (*Id.*)

Plaintiffs would have needed to prevail on a contested Motion for Class Certification. (Danas Decl., ¶ 23.) Defendants dispute that class certification is warranted here and would likely argue that the claims here require individualized inquiries, rather than involving common questions of law and fact. (*Id.*) For example, Defendants would likely argue that Class Members worked on their own time, and any non-compliant meal and rest breaks would have been due to voluntary or individualized reasons, rather than a common practice or policy of Defendants. (*Id.*)

Also, a significant portion of the Class Members would need to prevail by proving that they were in fact misclassified by Defendants as independent contractors. (Danas Decl., ¶ 24.) As noted above, Defendants would likely assert that the Class Members fall under various exceptions to the AB5 misclassification test (*e.g.,* data aggregators and professional services), as to which there is little or no binding case authority.

Additionally, a small portion of the Class was classified as exempt and non-exempt employees. (Danas Decl., ¶ 24.) To be entitled to most of the damages under the claims asserted as to the exempt employees, Plaintiffs would first need to prevail on the issue of misclassification to show that they should have been classified as non-exempt employees, and, as to the non-exempt employees, Plaintiffs would need to prevail on each one of their claims.

Then, even if Plaintiffs prevailed on certifying the class and showing that Class Members were misclassified, Plaintiffs would still need to prove Defendants' liability for damages (*e.g.,* that they were entitled to meal and rest breaks and Defendants failed to provide compliant breaks). (Danas Decl., ¶ 25.) For example, Defendants are likely to argue that even if Class Members can prove that they worked enough time to entitle them to meal and rest breaks, Class Members worked on their own time, and therefore any missed meal and rest breaks were purely voluntary. (Danas Decl., ¶ 27.). As another example, as to Plaintiffs' claims under the California Worker Adjustment and Retraining Notification ("WARN") Act, Plaintiffs would face a number of formidable obstacles, such as: (1) the requirement that Class Members worked for at least 6 of the prior 12 months before notice of a mass layoff was due, in order to qualify as "employees" under Cal. Lab.

Code § 1400.5(h); (2) that a mass layoff was at a "covered establishment," Cal. Lab. Code § 1400.5(a), despite the fact that Class Members worked remotely, instead of reporting to a single brick-and-mortar location; and (3) that a "mass layoff" occurred, *i.e.,* that 50 affected "employees" were laid off from a "covered establishment" within a 30-day period, Cal. Lab. Code § 1400.5(d). (Goodley Decl., ¶¶ 9-10.)

Relatedly, there were risks that Plaintiffs might prevail on claims, but not in a way that would cause PAGA and statutory penalties to attach. (Danas Decl., ¶ 32.) For example, the California Supreme Court has recently held that employers are only liable for failure to provide accurate wage statements and failure to pay all wages upon termination if they do so "knowingly and intentionally." (*See generally Naranjo v. Spectrum Security Services, Inc.* (2024) 15 Cal.5th 1056.) And Defendants would also dispute whether any misclassification was "willful." If an employer has a reasonable, good faith belief it is complying with California law, it may be able to avoid liability under Labor Codes 226 and 203. (*Id.*) Similarly, a trial court has discretion to reduce PAGA penalties if an employer makes a "good faith attempt" to comply with California law. (*Carrington v. Starbucks* (2018) 30 Cal.App.5th 504, 517, 529 [affirming the trial court's decision to award only $5 for each PAGA violation.])

The risks above, many of which are unique to misclassification or the industry specifically, were accounted for in reaching this settlement.

E. <u>Key Terms of the Proposed Settlement</u>

The Parties used the Los Angeles County Superior Court's Form Class Action and PAGA Settlement Agreement and Class Notice. The Settlement's key terms include:

1. <u>Class</u>: For settlement purposes only, the Parties agree to the certification of a class pursuant to California Code of Civil Procedure § 382 defined as: "all individuals who, during the Class Period: (i) provided services to Defendants as a Contributor[7] while residing in the State of

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[7] "Contributors" include individuals classified as independent contractors performing services with Scale AI or HireArt, including as Generative AI Annotators, Prompt Engineers, Subject Matter Experts, Contributors, or similar positions.

California[8]; or (ii) were placed by Hire Art to perform services similar to a Contributor with Scale AI or Smart Ecosystem while residing in the State of California." (Settlement, ¶ 1.4.)

2. Class Period: Defined as the period from December 10, 2020 through February 28, 2026. (Settlement, ¶ 1.12.)

3. Class Member: Defined as "means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non- Participating Class Member who qualifies as a PAGA Worker)." (Settlement, ¶ 1.9.)

4. Participating Class Member: Defined as a Class Member who does not submit a valid and timely Request for Exclusion to the Administrator. (Settlement, ¶ 1.41.)

5. Non-Participating Class Member: Defined as any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion. (Settlement, ¶ 1.32.)

6. PAGA Worker: Defined as an individual who, during the PAGA period: (i) provided services to Defendants as a Contributor while residing in the State of California; or (ii) were placed by Hire Art to perform services similar to a contributor to Scale AI or Smart Ecosystem while residing in the State of California. (Settlement, ¶ 1.40.)

7. PAGA Period: Defined as the period from October 29, 2023 through February 28, 2026. (Settlement, ¶ 1.37.)

8. Gross Settlement Amount: $12,500,000, which is the total amount Defendants agree to pay under the Settlement. The Gross Settlement Amount will be used to pay all Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payments and the Administration Expenses Payment. In no event shall Defendants be liable for the payment of any

[8] "Residing in the State of California" means (1) individuals who have a California address associated with an account on Defendants' platforms (including Outlier or Remotasks), a tax form provided to Defendants, or wage statements provided by Defendants, and/or (2) individuals whom Defendants can reasonably verify to have performed work in California. For individuals without complete mailing addresses, Defendants will work with the company, Covalynt, or a similar company, to verify addresses.

amounts exceeding the Gross Settlement Amount except for employer-side taxes as described in Paragraph 3.2.4.1." (Settlement, ¶ 1.24.)

9. Uncashed Checks: For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to a Court-approved nonprofit organization or foundation consistent with Code of Civil Procedure Section 384, subd. (b) ("Cy Pres Recipient"). The Parties propose Per Scholas as the Cy Pres Recipient. (Settlement, ¶ 4.4.4.)

10. Release by Participating Class Members: As of the Effective Date, all Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims arising during the Class Release Period that were asserted, or reasonably could have been asserted, based on the facts, allegations and/or claims stated in any of the Complaints filed in the Actions (including any amendments thereto), the Operative Complaint and/or the PAGA Notices, including, but not limited to:

> "Any claims under California Labor Code §§ 200, 201-204, 206.5, 210, 212, 213, 218.6, 221, 225.5, 223, 226, 226.2, 226.3, 226.7, 226.8, 233, 234, 246, 246.5, 248.5, 256, 300, 432.5, 450, 510, 512, 551, 552, 558, 558.1, 1174, 1174.5, 1182.11, 1182.12, 1193.6, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 1400 *et seq.* (including 1400.5, 1401, 1402 and 1403), 1997, 1997.1, 2750.3, 2775, 2800, 2802, 2810.5, 2810.8, 3700, 3700.5, Division 5 of the California Labor Code (including, but not limited to, California Labor Code §§ 6300, 6301, 6311, 6400, 6401, 6401.7, 6402, 6403, 6404, 6406, 6423, 6425, 6426, 6427, 6428, 6429, 6430, 6431, 6432, 6433); California Business and Professions Code § 17200, *et seq.*; California Civil Code § 3294; Industrial Welfare Commission Wage Orders, including inter alia, Wage Order Nos. 2, 4 and 9; 29 U.S.C. § 2101, *et seq.,* and/or municipal and county codes across the state of California, including but not limited to City of L.A. Cal. Code art. 7-7.5; County of Los Angeles Code § 8.100.040, *et seq*., and San Francisco Cal. Code 12R..
>
> Any claims for (1) Failure to Properly Pay Minimum Wages, Straight Time Wages, Contractual Wages, and Liquidated Damages, (2) Failure to Properly Provide Meal Periods or Meal Premium Wages, (3) Failure to Properly Provide Rest Periods or Rest Break Premium Wages, (4) Failure to Properly Pay Overtime Wages, (5) Failure to Timely Pay Wages, (6) Failure to Pay Wages Upon Separation, (7) Failure to Keep Requisite Payroll Records, (8) Failure to Provide Timely and Accurate Wage Statements, (9) Failure to Properly Maintain Required Records, (10) Failure to Comply with the Wage Theft Prevention Act, (11) Unlawful Assignment of Wages, (12) Failure to Indemnify and Reimburse Necessary Business Expenses, (13) Failure to Comply with California Paid Sick Leave Laws, (14) Willful Misclassification of an Employee as an Independent Contractor, (15) Failure to Furnish Safe and Healthful Employment or Place of Employment, (16)

> Failure to Properly Provide Seventh Day of Rest, (17) Failure to Provide Proper Workers' Compensation Insurance, (18) Violations of CalWARN, Labor Code § 1400, *et seq*., (19) Violations of WARN, 29 U.S.C. § 2101, *et seq*., (20) Failure to Pay Using a Proper Negotiable Instrument; (21) Failure to Comply with Labor Code § 432.5; and (22) Violation of Unfair Competition Laws; and
>
> Any claims for injunctive relief, declaratory relief, restitution, liquidated damages, penalties, punitive damages, attorney fees, costs, pre-judgment, post-judgment interest, and/or any other relief alleged or which could have been alleged under the facts, allegations, and/or claims pleaded in any of the Complaints filed in the Actions (including any amendments thereto), the Operative Complaint and/or the PAGA Notices" (Settlement, ¶ 5.3.)

11. Release by PAGA Claimants: As of the Effective Date, all PAGA Workers and the State of California are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties arising during the PAGA Release Period that were asserted, or reasonably could have been asserted, based on the facts, allegations, and/or claims stated in any of the Complaints filed in the Actions (including any amendments thereto), the Operative Complaint and/or the PAGA Notices, including, but not limited to:

> "Any PAGA claims premised on California Labor Code §§ 200, 201-204, 206.5, 210, 212, 213, 218.6, 221, 225.5, 223, 226, 226.2, 226.3, 226.7, 226.8, 233, 234, 246, 246.5, 248.5, 256, 300, 432.5, 450, 510, 512, 551, 552, 558, 558.1, 1174, 1174.5, 1182.11, 1182.12, 1193.6, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 1400 *et seq*. (including 1400.5, 1401, 1402 and 1403), 1997, 1997.1, 2750.3, 2775, 2800, 2802, 2810.5, 2810.8, 3700, 3700.5, Division 5 of the California Labor Code (including, but not limited to, California Labor Code §§ 6300, 6301, 6311, 6400, 6401, 6401.7, 6402, 6403, 6404, 6406, 6423, 6425, 6426, 6427, 6428, 6429, 6430, 6431, 6432, 6433); Industrial Welfare Commission Wage Orders, including *inter alia*, Wage Order Nos. 2, 4 and 9; and/or municipal and county codes across the state of California, including but not limited to City of L.A. Cal. Code art. 7-7.5; County of Los Angeles Code § 8.100.040, *et seq*., and San Francisco Cal. Code 12R.
>
> Any PAGA claims for (1) Failure to Properly Pay Minimum Wage, Straight Time Wages, Contractual Wages, and Liquidated Damages, (2) Failure to Properly Provide Meal Periods or Meal Premium Wages, (3) Failure to Properly Provide Rest Periods or Rest Break Premium Wages, (4) Failure to Properly Pay Overtime Wages, (5) Failure to Timely Pay Wages, (6) Failure to Properly Pay Wages Upon Separation, (7) Failure to Keep Requisite Payroll Records, (8) Failure to Provide Timely and Accurate Wage Statements, (9) Failure to Maintain Required Records, (10) Failure to Comply with the Wage Theft Prevention Act, (11) Unlawful Assignment of Wages, (12) Failure to Indemnify and Reimburse Necessary Business Expenses, (13) Failure to Comply with California Paid Sick Leave Laws, (14) Willful Misclassification of an Employee as an Independent Contractor, (15) Failure to Furnish Safe and Healthful Employment or Place of Employment, (16) Failure to Provide Seventh Day of Rest, (19) Failure to Provide Workers' Compensation Insurance, (20) Violations of CalWARN, Labor Code § 1400, *et*

> *seq.*, (20) Failure to Pay Using a Proper Negotiable Instrument; and (21) Failure to Comply with Labor Code § 432.5; and
>
> Any PAGA claims for injunctive relief, declaratory relief, penalties, attorney fees, costs, pre-judgment interest, post-judgment interest, and/or any other relief alleged or which could have been alleged under the facts, allegations, and/or claims pleaded in any of the Complaints filed in the Actions (including any amendments thereto), the Operative Complaint and/or the PAGA Notice." (Settlement, ¶ 5.4.)

12. No Reversion: "None of the Gross Settlement Amount will revert to Defendants." (Settlement, ¶ 3.1.)

13. PAGA Payment and Allocation: Defined as the $500,000.00 from the Total Gross Settlement Amount allocated to civil penalties under the Private Attorneys General Act, California Labor Code §§ 2698, et seq. ("PAGA"), 65% ($325,000.00) of which is being paid to the LWDA and 35% ($175,000.00) in settlement of PAGA claims. (Settlement, ¶ 3.2.5.) Class Counsel submitted the proposed settlement to the LWDA concurrently with filing this Motion for Preliminary Approval. (Danas Decl., ¶ 11.)

14. Net Settlement Amount: Defined as the Gross Settlement Amount, less the following payments in the amounts approved by the Court: PAGA Payment, Class Representative Service Payments, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The Net Settlement Amount is to be paid to Participating Class Members as their Individual Class Payments. (Settlement, ¶ 1.31.)

15. Distribution Formula: The disbursement amount for each Class Member will be based on the number of weeks that each Class Member performed work for Defendants. Class Members will receive a pro-rata share of the Net Settlement Amount based on the number of workweeks worked compared to the total number of workweeks of the Class. (Settlement, ¶ 3.2.4.)

16. Tax Allocation: For Participating Class Members who performed services as a Contributor during the Class Period, 100% of each of these Participating Class Member's Individual Class Payment will be allocated as non-wages. For Participating Class Member who have not performed services as a Contributor during the Class Period, 10% of each of these Participating Class Member's Individual Class Payment will be allocated as wages and 90% will be allocated as non-wages. (Settlement, ¶ 3.2.4.1.)

17. Class Representative Service Payment: Subject to Court approval, Plaintiffs will each receive a service award not to exceed $15,000.00. (Settlement, ¶ 3.2.1.) If the Court approves a lesser enhancement, then the unapproved portion or portions shall revert into the Net Settlement Amount to be distributed between the Participating Class Members on a pro-rata basis. (Settlement, ¶ 3.2.1.)

18. Attorneys' Fees and Costs: Defendants will not oppose a Class Counsel Fee Payment application of up to 33 1/3% ($4,166,666.67) of the Gross Settlement Amount, plus a Class Counsel Litigation Expenses Payment for out-of-pocket costs not to exceed $100,000.00. (Settlement, ¶ 3.2.2.) At this time, Class Counsel's costs are approximately $22,847.51 incurred by Clarkson Law Firm, $13,414.37 incurred by Bryan Schwartz Law, P.C., $7,777.29 incurred by Dardarian Ho Kan & Lee, and $2,050 incurred by Goodley McCarthy, L.L.C. (Danas Decl., at ¶ 48; Schwartz Decl., ¶ 12; Ho Decl. at ¶ 11; Goodley Decl. at ¶ 13.)

19. Notice of Proposed Class Action Settlement: The Class Notice sets forth in plain terms, a statement of the case, the terms of the Settlement Agreement, the approximate amount of attorneys' fees, costs, and service award being sought, and an explanation of how the settlement allocations are calculated. (Danas Decl., ¶ 10; **Ex. 1.**) The Class Notice also includes information on how class members can opt-out in the event they decide not to participate in the settlement. (*Id.*) Class Members and PAGA Workers will be notified by first-class mail of the settlement, except those for whom Defendants do not have a valid mailing address. (*Id.*) Those Class Members and PAGA Workers will instead receive notice by email. (*Id.*) The notice will be provided by Simpluris, Inc., the proposed Administrator, who will undertake its best efforts to ensure that the notice is provided to the current addresses of Class Members/PAGA Workers, including conducting a national change of address search and re-mailing the notice to updated addresses. (*Id.*) (Danas Decl., ¶ 10; **Ex. 1.**)

III. DISCUSSION

To prevent fraud, collusion, or unfairness to the class, the settlement of a class action requires court approval. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800-01.) This Court has broad discretion to determine whether the proposed settlement is fair. (*Mallick v. Super.*

Ct. (1979) 89 Cal.App.3d 434, 438.) Fairness is presumed when: (1) the settlement is reached through arm's-length bargaining; (2) investigation is sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. (*Dunk,* 48 Cal.App.4th at 1800.)

In considering whether a settlement is reasonable, the trial court should consider relevant factors, which may include the strength of Plaintiffs' case, the risk, expense, complexity, and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement. (*Kullar v. Foot Locker Retail, Inc*. (2008) 168 Cal.App.4th 116, at p. 128.) In order to approve a class action settlement, the court must satisfy itself that the class settlement is within the "ballpark" of reasonableness. (*Id*. at 133.) The record need not contain an explicit statement of the maximum theoretical recovery. (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 408-09 [holding that *Kullar* does not require "an explicit statement of the maximum amount the Plaintiffs class could recover if it prevailed on all its claims", but instead, only an "understanding of the amount that is in controversy and the realistic range of outcomes of the litigation."].)

As discussed below, Class Counsel has provided information exceeding the threshold required to provide this Court with materials and information necessary to determine that the proposed settlement is fair, adequate, and reasonable.

A. <u>The Settlement Is Fair, Reasonable, Adequate, and the Product of Investigation, Litigation, and Negotiation.</u>

1. The Settlement Is the Product of Informal Discovery, Investigation, and Informed and Non-Collusive Arm's-Length Negotiations.

Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is offered; thus, there is a presumption here that the negotiations were conducted in good faith. (Conte & Newberg, Newberg on Class Actions (3rd ed.) § 11.51.) Settlement is favored, and settlement agreements are realistically assessed. (*Stamburgh v. Super.*

Ct. (1976) 62 Cal.App.3d 231, 236; *Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447 ["The fact that a Plaintiffs might have received more if the case had been fully litigated is no reason not to approve the settlement."].)

The Settlement was reached following extensive negotiations following two full days of mediation with experienced employment mediators, Judges McGuiness and Lichtman (Danas Decl., ¶¶ 9-10; Schwartz Decl. ¶ 5.) The settlement negotiations were at arm's length and, although conducted in a professional manner, were adversarial. (Danas Decl., ¶ 9) The Parties went into the mediation willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate their position through trial and appeal if a settlement had not been reached. (*Id.*)

Prior to reaching this settlement, Class Counsel conducted informal discovery concerning the claims set forth in the Actions, including review of a sampling of time and pay data, data showing active dates of accounts in the sample, and statistical data regarding the putative class and aggrieved employees. (*Id.* at ¶¶ 7-8.) Plaintiffs also spoke to over 300 who worked for Defendants regarding their experiences and the claims at issue, and obtained declarations from putative class members. (*Id*.) In conjunction with their extensive factual investigation, Class Counsel investigated the applicable law regarding the claims and defenses asserted in the Litigation. (*Id*.) Thus, Plaintiffs and their counsel were able to act intelligently and effectively in negotiating the proposed Settlement. (*Id*.)

2. The Settlement Is Fair and Reasonable in Light of the Parties' Respective Legal Positions.

A settlement is not judged against what Plaintiffs might recover had they prevailed at trial, nor does the settlement have to provide 100% of the damages sought to be fair and reasonable. (*Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 224, 246, 250 ["Compromise is inherent and necessary in the settlement process … even if the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation."].)

This settlement avoids the risks and the accompanying expense of further litigation. (Danas Decl., ¶ 35.) While Plaintiffs are confident in the merits of their claims, a legitimate controversy exists as to each cause of action. (*Id.* at ¶ 34.) Plaintiffs also recognize that proving the amount of wages due to each class member would be an expensive, time-consuming, and uncertain proposition. (*Id*.)

The proposed settlement of $12,500,000 therefore represents a substantial recovery when compared to the enormous risks here and the unrealistic event that full penalties and classwide damages will be awarded, in light of the arbitration clause, novelty of several issues, and the overall risks of protracted litigation. (*Id.* at ¶¶ 37.) The settlement represents 8.6% of the total possible recovery for the class if the class prevails on every single risk including arbitration, class certification, and merits. This is in line with other agreements that were granted preliminary approval. (*Wilburg v. iVueit, LLC* (N.D.Cal. Aug. 26, 2025, No. 24-cv-02642-AMO) 2025 U.S.Dist.LEXIS 166103, at *13.) [granting preliminary approval of a misclassification wage and hour settlement where recovery amounted to approximately 7% of total estimated damages.]; *Ma v. Covidien Holding, Inc.*, No. 12 Civ. 02161, 2014 U.S. Dist. LEXIS 13296, 2014 WL 360196, at *5 (C.D. Cal. Jan. 31, 2014) [granting preliminary approval of a wage and hour settlement where class payment represented 9.1% of the total value of the action]; *Singh v. Roadrunner Intermodal Servs., LLC*, No. 15 Civ. 01497, 2018 U.S. Dist. LEXIS 89308, 2018 WL 2412325, at *7 [E.D. Cal. May 29, 2018) (granting preliminary approval of wage and hour settlement representing approximately 12% of the estimated maximum damages *without accounting for liability under PAGA*.])

Because of the proposed Settlement, participating class members will receive timely, guaranteed relief and will avoid the risk of an unfavorable judgment. When considering the risks of litigation, the uncertainties involved in achieving class certification, the burdens of proof necessary to establish liability, the probability of appeal of a favorable judgment, it is clear that the settlement amount of $12,500,000 is within the "ballpark" of reasonableness, and preliminary settlement approval is appropriate. (*Id.*) Indeed, each Class Member is eligible to receive an average gross benefit of approximately **$815.23.** (*Id.* at ¶ 35.) This value is higher than other approved misclassification settlements. (*See e.g. Cotter v. Lyft, Inc.* (N.D. Cal. 2016) 193 F.Supp.3d 1030, 1037 [$27 million in monetary relief for approximately 150,000 class members, resulting in $180 per class member.]) Moreover, the significant chunk of the estimated total possible damages arises out of the PAGA claims, especially penalties for willful misclassification, which are discretionary and come with additional risks as discussed above. (Danas Decl. ¶¶ 31-32.)

3. Class Counsel Has Extensive Experience in Class Action Litigation.

The settlement negotiations were conducted by highly capable and experienced counsel. Class Counsel have a strong record of vigorous and effective advocacy for their clients and are experienced in handling complex wage and hour class action litigation. (Danas Decl., at ¶¶ 49-56; Ho Decl. at ¶¶ 12-15; Schwartz Declaration at ¶¶ 2-3; Goodley Decl. at ¶¶ 14-21.) Although Plaintiffs and their counsel were prepared to litigate the claims alleged in the litigation, they support the proposed Settlement as being in the best interests of the class.

B. <u>The Proposed Class Notice of Settlement Should Be Approved.</u>

1. The Proposed Class Notice Plan Satisfies Due Process

Notice requirements are set forth in the California Rules of Court. (Cal. Rules of Court, Rule 3.766 (e) and (f).) California law vests the Court with broad discretion in fashioning an appropriate notice program. (*Cartt v. Super Ct.* (1975) 50 Cal.App.3d 960, 973-74.) There is no statutory or due process requirement that all class members receive actual notice, but in this matter, the class members will receive direct mailed or emailed notice. As the Court of Appeals has explained, "[t]he notice given should have a reasonable chance of reaching a substantial percentage of the Class Members … ." (*Id.* at 974.) In this case, notice of the proposed settlement will be provided by direct mail, the best possible form of notice.

2. The Notice is Accurate and Informative

The Parties' proposed Administrator Simpluris, Inc is adequate to administer the notice procedure and settlement as a whole. Simpluris has significant experience with distributing wage and hour class action settlements. (*See e.g. Andrade v. Beacon Sales Acquisition* (C.D.Cal. May 24, 2021, No. 2:19-CV-06963-MCS-RAO) 2021 U.S.Dist.LEXIS 198561, at *10; (*Sarabia* *v. Ricoh United States, Inc.* (C.D.Cal. May 1, 2023, No. 8:20-cv-00218-JLS-KES) 2023 U.S.Dist.LEXIS 85742, at *6.) These settlements include *Rimler, et al. v. Postmates Inc.*, San Francisco Case No. CJC-20-005068, consisting of over 600,000 class members.

The Class Notice attached as Exhibit A to Exhibit 1 of the Danas Declaration should be approved. It will be disseminated through direct U.S. first-class mail to the last known address for each Class Member and PAGA worker and through email for whom Defendants do not have a physical address. It informs the Class Members of the terms of the Settlement and their right to be excluded from the Settlement. The Notice also provides instructions in the event a Class Member wishes to object to this proposed class action settlement, either in writing or at the hearing, and explains that the Class Member will have the opportunity to file an objection and be heard at the Final Approval Hearing.

The Class Notice also fulfills the requirement of neutrality in class notices. (Conte & Newberg, Newberg on Class Actions (3rd Ed.) § 8.39.) It summarizes the proceedings to date and the terms and conditions of the Settlement Agreement, in an informative and coherent manner. It makes clear that the Settlement Agreement does not constitute an admission of liability by the Defendants, who deny all liability, and it recognizes that this Court has not ruled on the merits of the action. It also states that the final settlement approval decision has yet to be made. Accordingly, the Class Notice complies with the standards of fairness, completeness, and neutrality required of a combined settlement-certification class notice.

C. The Proposed Attorneys' Fees and Costs Are Reasonable

Under the Settlement, subject to the Court's approval, the Administrator will allocate from the Gross Settlement Amount a Class Counsel Fee Payment in the amount of $4,166,666.67, which is 33 1/3% of the Gross Settlement Amount, and a Class Counsel Litigation Expenses Payment to compensate Class Counsel for actual costs incurred to prosecute these Actions. These amounts will be disclosed to all class members in the Class Notice and are reasonable.

1. Class Counsel Request an Award of Fees Based on the "Common Fund" Method.

California courts have long awarded attorneys' fees as a percentage of the benefit created by counsel in pursuing claims on behalf of a class. The California Supreme Court held that "when a number of persons is entitled in common to a specific fund, and an action brought by a Plaintiffs or Plaintiffs for the benefit of all results in the creation or preservation of that fund, such Plaintiffs or Plaintiffs may be awarded attorneys' fees out of the fund." (*Serrano v. Priest* (1977) 20 Cal.3d 25, 34, quoting *D'Amico v. Bd. of Medical Examiners* (1974) 11 Cal.3d 1.)

Class Counsel seeks an award of attorneys' fees on the "percentage of recovery/common fund" theory. The purpose of this approach is to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." (*Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) In *Quinn v. State of California* (1995) 15 Cal.3d 162, the California Supreme Court stated: "[O]ne who expends attorneys' fees in winning a suit which creates a fund from which others derive benefits may require those passive beneficiaries to bear a fair share of the litigation costs." (*Id.* at 167.) Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, the California Supreme Court recognized that the common fund doctrine has been applied "consistently in California when an action brought by one party creates a fund in which other persons are entitled to share." (*Id.* at p. 110.)

The California Supreme Court affirmed in *Laffitte v. Robert Half Int'l Inc*. (2016) 1 Cal.5th 480 that, "when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created." (*Id*. at p. 503.) The court explained: "The recognized advantages of the percentage method—including relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation—convince us the percentage method is a valuable tool that should not be denied our trial courts." (*Id*. [internal citations omitted].)

2. The Requested Fee Award Is in Line with Typical Cases.

According to a leading treatise on class actions, "No general rule can be articulated on what is a reasonable percentage of a common fund. Usually, 50% of the fund is the upper limit on a reasonable fee award from a common fund in order to assure that the fees do not consume a disproportionate part of the recovery obtained for the class, although somewhat larger percentages are not unprecedented." (*See* Conte & Newberg, Newberg on Class Actions (3rd Ed.) § 14.03.) Attorneys' fees that are fifty percent of the fund are typically considered the upper limit, with thirty to forty percent commonly awarded in cases where the settlement is relatively small. (*Id*; *see also Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294 [stating that most cases where 30-50 percent was awarded involved "smaller" settlement funds of under $10 million].)

Here, Plaintiffs request attorneys' fees equal to 33 1/3% of the Gross Settlement Amount, which is in line with the prevailing guidelines established in California case law and academic literature and is consistent with awards in California. (*See Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 545 ["'[F]ee awards in class actions average around one-third of the recovery' regardless of 'whether the percentage method or the lodestar method is used.'"]; *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, fn.11.) Moreover, Plaintiffs have obtained an early resolution through this settlement for the class members, which is preferable over lengthy litigation. (*See, e.g., Ramirez v. Rite Aid Corp.* (C.D.Cal. May 3, 2022, No. CV 20-3531-GW-SKx) 2022 U.S.Dist.LEXIS 109069, at *12 ["[U]nless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results."]; *Vizcaino v. Microsoft* (9th Cir. 2002) 290 F.3d 1043, 1050 fn. 5 ["We do not mean to imply that class counsel should necessarily receive a lesser fee for settling a case quickly; in many instances, it may be a relevant circumstance that counsel achieved a timely result for class members in need of immediate relief."'].) Therefore, Plaintiffs' counsel should not be punished for achieving a quick result for the class members by a reduction of their fees, especially since they have performed over 3,000 hours, and almost $2,000,000 of legal work with no guarantee of compensation. (*Laffitte,* 1 Cal.5th at 487, 503-504 [contingent risk considered in awarding percentage of fund that would reflect a multiplier >2 in a lodestar cross-check].) *See also generally Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 255, disapproved of on other grounds by *Hernandez v. Restoration Hardware* (2018) 4 Cal.5th 260 ("Multipliers can range from 2 to 4 or even higher."); *Vizcaino,* 290 F.3d at 1051 n. 6 (approving fee award with lodestar cross-check multiplier of 3.65, collecting appendix of cases approving fees awarded with lodestar cross-check up to 19.6x).

Accordingly, Plaintiffs respectfully request that the Court approve the attorneys' fees as negotiated by the Parties and requested herein.

3. The Experience, Reputation and Ability of Class Counsel Support the Requested Fee Award.

As demonstrated by their past experience in pursuing class actions on behalf of consumers and employees, Class Counsel possesses considerable expertise in litigating class actions. (Danas Decl.. at ¶¶ 49-56; Ho Decl. at ¶¶ 12-15; Schwartz Declaration at ¶¶ 2-3; Goodley Decl. at ¶¶ 14-21.) Class Counsel has been involved as lead counsel or co-counsel in numerous class actions that resulted in millions in recovery. (*Id*.) Because it is reasonable to compensate class counsel commensurate with their skill, reputation and experience, Class Counsel's requested fee award is supported here.

Class Counsel's experience in wage and hour class actions was integral in evaluating the strengths and weaknesses of the case against Defendants and the reasonableness of the settlement. Practice in wage and hour litigation requires skill and knowledge concerning the rapidly evolving substantive law (state and federal), as well as the procedural law of class action litigation. Based on these and other factors, Class Counsel has frequently received fee awards of this percentage from the gross recovery for the class. Therefore, the requested fee award is reasonable and fair.

D. <u>The Named Plaintiffs' Awards Are Reasonable.</u>

Named Plaintiffs in class action lawsuits "are eligible for reasonable incentive payments to compensate them for the expense or risk they have incurred in conferring a benefit on other members of the class." (*Munoz,* 86 Cal.App.4th at 412.) Courts routinely grant approval of class action settlement agreements containing enhancements for the class representatives, which are necessary to provide incentive to represent the class, and are appropriate given the benefit the class representatives help to bring about for the class. (*See Rodriguez v. W. Publ'g Corp*. (9th Cir. 2009) 563 F.3d 948, 958-59.)

Service awards are particularly important to plaintiffs in wage and hour cases because they promote the important public policies underlying the wage and hour laws. This strong policy is codified in Labor Code § 90.5, which provides, "it is the policy of this state to vigorously enforce minimum labor standards in order to ensure employees are not required or permitted to work under substandard unlawful conditions… ."). Nonetheless, the California Supreme Court has noted that "retaliation against employees for asserting statutory rights under the Labor Code is widespread," despite anti-retaliation statutes designed to protect employees. (*Gentry v. Super. Ct.* (2007) 42 Cal.4th 443, 460-61, overruled on other grounds in *AT&T Mobility LLC v. Concepcion* (2011) 563 U.S. 333.) *See* Rogowicz Declaration, ¶ 7.) In this context, class representatives should be rewarded for assuming the risk of retaliation for the sake of class members. (*See Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 F.R.D. 174, 187.)

Under the Settlement Agreement, subject to the Court's approval, the Administrator will allocate from the Gross Settlement Amount a Class Representative Service Payment in the amount of $15,000 to each Plaintiff. This amount is also in exchange for Plaintiffs' general release of all claims against Defendants. Class Counsel represent, and Plaintiffs testify to, that Plaintiffs devoted a great deal of time and work assisting counsel in the case, communicated with counsel very frequently for litigation and to prepare for mediation, and were frequently in contact with Class Counsel during the mediation. (Danas Decl. at ¶¶ 38-42; Schwartz Declaration at ¶ 10; *See* Declarations of Steve McKinney, Michelle Lynn Brunetti, and Roger Justin Caffier, Chloe Agape, Amber Rogowicz, and Alexander Ovadal in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement.) This amount is reasonable particularly in light of the substantial benefits Plaintiffs generated for all class members. (*Id*.)

When compared with the amounts awarded in typical class action cases, the amount requested here is particularly reasonable. Indeed, a ***2006*** study examining the average incentive award given to class action Plaintiffs from ***1993 to 2002*** found that the "average award per class representative was $15,992 and the median award per class representative was $4,357." (Theodore Eisenberg & Jeffrey P. Miller, "Incentive Awards to Class Action Plaintiffs: An Empirical Study", 53 UCLA L. Rev. 1303, 1308 (2006).) That same study found that named Plaintiffs in employment discrimination class actions received an average award of $69,850 and a median award of $31,081, while named Plaintiffs in other employment class actions received an average award of $12,121 and a median award of $13,059. (*Id.* at 1334.) The authors of the study found that higher awards in employment cases reflected the "courts' wish to make representative Plaintiffs whole by compensating them for the high costs of their service to the class, including risks of stigmatization or retaliation on the job." (*Id.* at 1308.)

IV. <u>CERTIFICATION FOR SETTLEMENT PURPOSES ONLY IS WARRANTED</u>

A. <u>Legal Standard</u>

The proposed Class is well suited for class certification. All of the claims derive from a core set of alleged violations of California's wage and hour laws and regulations. For the reasons set forth more fully below, for purposes of settlement only, the Class satisfies the prerequisites for certification under Code of Civil Procedure § 382. Section 382 provides: "when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all." (Code Civ. Proc., § 382.) There are two requirements to section 382: "(1) There must be an ascertainable class; and (2) there must be a well-defined community of interest in the questions of law and fact involved affecting the parties to be represented." (*Daar v. Yellow Cab Co*. (1967) 67 Cal.2d 695, 704 [citations omitted].) To clarify these requirements, the California Supreme Court has looked to Federal Rule of Civil Procedure 23 to explain that the community-of-interest requirement itself embodies three factors: "(1) predominant questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." (*Richmond v. Dart Indus., Inc*. (1981) 29 Cal.3d 462, 470.)

California law and policy favor the fullest and most flexible use of the class action device. (*Id.* at pp. 469-73.) Indeed, "[c]ourts long have acknowledged the importance of class actions as a means to prevent a failure of justice in our judicial system," particularly where the rights of consumers are at issue. (*Linder v. Thrifty Oil Co*. (2000) 23 Cal.4th 429, 434.) Any doubt as to the appropriateness of class treatment should be resolved in favor of certification. (*Richmond*, *supra,* 29 Cal.3d at 473-75.)

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B. <u>Plaintiffs Maintains That the Criteria for Class Certification Are Satisfied for Settlement Purposes.</u>

1. The Class is Ascertainable and Numerous.

Plaintiffs contend that the proposed class that Plaintiffs seek to represent is easily ascertainable, and it includes approximately 15,333 Class Members, thus far surpassing the numerosity threshold.

2. There are Many Common Issues of Law and Fact Which Predominate.

The Court should grant conditional class certification for settlement purposes here on the grounds that questions of law and fact common to all class predominate over any individual questions. This inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation. (*See, e.g.*, *Clothesrigger, Inc. v. GTE Corp*. (1987) 191 Cal.App.3d 605, 617.)

Here, Plaintiffs allege that Defendants' wage and hour practices resulted in Labor Code violations. Plaintiffs allege that Defendants failed to have legally compliant meal and rest period policies, resulting in Defendants failing to provide compliant meal and rest periods or pay all meal rest premiums, that Plaintiffs and Class Members were required to perform work off-the-clock which they were not compensated for, that Defendants misclassified Class Members, that Defendants failed to calculate and pay sick pay using the methods outlined in the Labor Code, Defendants failed to comply with paid sick leave, that Defendants failed to reimburse Plaintiffs and Class Members for necessary business expenses, that Defendants failed to properly provide seventh day of rest, that Defendants failed to provide workers compensation insurance, that Defendants failed to comply with the Wage Theft Prevention Act, that Defendants failed to comply with Labor Code § 432.5, that Defendants violated the California Worker Adjustment and Retraining Notification ("WARN") Act and the federal WARN Act, that Defendant unlawfully assigned wages, that Defendant failed to pay using a negotiable instrument, and that Defendants failed to provide a safety place of employment. Based on these allegations, Plaintiffs assert related claims for failure to provide accurate wage statements, failure to timely pay wages, failure to timely pay all final wages at termination, failure to keep requisite payroll records and properly maintain required records, unfair business practices, and civil penalties under PAGA. Plaintiffs contend that the factual and legal issues are the same for all of the identified class members, including Plaintiffs. Further, all class members are alleged to have suffered from, and seek redress for, the same alleged injuries. Defendants deny all allegations.

3. Plaintiffs' Claims Are Typical of the Claims of the Class.

The typicality requirement does not focus on the individual characteristics or circumstances of the representative Plaintiffs compared to those of the remainder of the class, but rather upon the typicality of the proposed representative's claims as they relate to the defendant's conduct and activities. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 47 ["[t]he only requirements are that common questions of law and fact predominate and that the class representative be similarly situated" vis-à-vis the class.].) A representative Plaintiff's claims are typical of the class if they arise from the same event, practice or course of conduct, and if the claims rest on the same legal theories. (*Id*.) That is precisely the case here. Plaintiffs are former independent contractors and/or exempt and/or non-exempt employees of Defendants; as such, they allege that they were subject to the same policies and practices as other similarly situated independent contractors and/or exempt and/or non-exempt employees.

4. Plaintiffs and Their Counsel Meet the Adequacy Requirement.

The adequacy of representation requirements is met by fulfilling two conditions: first, a named Plaintiff must be represented by counsel qualified to conduct the pending litigation; second, a named Plaintiff's interests cannot be antagonistic to those of the class. (*McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 451.)

All of these requirements are met here for settlement purposes. Plaintiffs retained counsel with extensive experience in prosecuting complex class actions, including similar class actions that previously settled. (Danas Decl.. at ¶¶ 49-56; Ho Decl. at ¶¶ 12-15; Schwartz Declaration at ¶¶ 2-3; Goodley Decl. at ¶¶ 14-21.) Class Counsel unquestionably is "qualified, experienced and generally able to conduct the proposed litigation." (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 875.) In addition, Plaintiffs have no conflicts, and Plaintiffs have, with counsel, litigated this case and diligently reviewed the settlement terms, showing their dedication. Plaintiffs' willingness to serve as representatives demonstrate their serious commitment to bringing about the best results possible for the class. (*McGhee*, 60 Cal.App.3d at 451.)

5. A Class Action is Superior to a Multiplicity of Litigation.

Finally, in making its class certification decision, the Court must determine that a class action would be superior to alternative means for the fair and efficient adjudication of the litigation. By consolidating many potential individual actions into a single proceeding, this Court's use of the class action device enables it to manage this litigation in a manner that serves the economics of time, effort and expense for the litigants and the judicial system. Absent class treatment, similarly situated employees with small but nevertheless meritorious claims for damages would, as a practical matter, have no means of redress because of the time, effort and expense required to prosecute individual actions. Moreover, in the context of settlement, the superiority concerns are essentially non-existent.

V. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant preliminary approval of the proposed Class Settlement, approve the Class Notice, appoint Simpluris as the Administrator and set a Final Approval Hearing in September 2026, or the first available date thereafter.

Dated: February 6, 2026

Respectfully submitted,
CLARKSON LAW FIRM, P.C.
BRYAN SCHWARTZ LAW, P.C.
DARDARIAN HO KAN & LEE
GOODLEY MCCARTHY LLC

/s/ Glenn A. Danas

Glenn A. Danas
Maxim Gorbunov
Zarrina Ozari
Bryan Schwartz
Sam Goity
Laura L. Ho
Ginger Grimes
James Goodley
Ryan McCarthy

Attorneys for Plaintiffs Steve McKinney, Michelle Lynn

Brunetti, Roger Justin Caffier, Chloe Agape, Amber Rogowicz, and Alexander Ovadal, and all others similarly situated

PROOF OF SERVICE

I am employed in the County of Los Angeles. I am over the age of eighteen years and not a party to the within entitled action. My business address is 22525 Pacific Coast Highway, Malibu, CA 90265.

On **February 6, 2026**, I served a copy of the following document(s) on the interested party(ies) and/or person(s) identified on the Service List in the manner set forth below.

Documents Served

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES

Method of Service

[X] **BY ELECTRONIC MEANS**: I caused to be transmitted a true and correct copy of the foregoing document(s) via File & Serve XPress to the interested party(ies)/person(s) as set forth on the above service list pursuant to court order.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on **February 6, 2026**

Antonia Smith
Antonia Smith

SEE ATTACHED SERVICE LIST

SERVICE LIST

GIBSON, DUNN & CRUTCHER LLP
Hazel Chuang
HChuang@gibsondunn.com
Theane Evangelis, SBN 243570
tevangelis@gibsondunn.com
Heather L. Richardson, SBN 246517
hrichardson@gibsondunn.com
Brandon J. Stoker, SBN 277325
bstoker@gibsondunn.com
333 South Grand Avenue
Los Angeles, California 90071-3197
Telephone: 213.229.7000
Facsimile: 213.229.7520

Attorneys for Defendants

DARDARIAN HO KAN & LEE
David Borgen (SBN 099354), Of Counsel
dborgen@dhkl.law
Laura L. Ho (SBN 173179)
lho@dhkl.law
Ginger Grimes (SBN 307168)
ggrimes@dhkl.law
155 Grand Avenue, Suite 900
Oakland, CA 94612
Tel: (510) 763-9800
Fax: (510) 835-1417

Attorneys for Plaintiffs and the Putative Class

GOODLEY McCARTHY LLC
James E. Goodley
james@gmlaborlaw.com
Ryan P. McCarthy
ryan@gmlaborlaw.com
One Liberty Place
1650 Market Street, Suite 3600
Philadelphia, PA 19103
Tel: (215) 394-0541

Attorneys for Plaintiffs and the Putative Class

BRYAN SCHWARTZ LAW, P.C.
Bryan Schwartz (SBN 209903)
bryan@bryanschwartzlaw.com
Sam Goity (SBN pending)
sam@bryanschwartzlaw.com
180 Grand Avenue, Suite 1380
Oakland, California 94612
Tel. (510) 444-9300
Fax (510) 444-9301
Email: bryan@bryanschwartzlaw.com

Attorneys for Plaintiffs and the Putative Class

CLARKSON LAW FIRM, P.C.
Zarrina Ozari (State Bar No. 334443)
zozari@clarksonlawfirm.com
95 3rd St, 2nd Floor
San Francisco, California 94103
Telephone: (415) 651-7990
Facsimile: (213) 788-4070

Attorneys for Plaintiffs and the Putative Class